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The Security Council,

Recalling Security Council resolution 827 (1993) of 25 May 1993, which established the International Tribunal for the former Yugoslavia ("ICTY"), and resolution 955 (1994) of 8 November 1994, which established the International Criminal Tribunal for Rwanda ("ICTR"), and all subsequent relevant resolutions,

Recalling in particular Security Council resolutions 1503 (2003) of 28 August 2003 and 1534 (2004) of 26 March 2004, which called on the Tribunals to take all possible measures to complete investigations by the end of 2004, to complete all trial activities at first instance by the end of 2008, and to complete all work in 2010 ("completion strategy"), and *noting* that those envisaged dates have not been met,

Acknowledging the considerable contribution the Tribunals have made to international criminal justice and accountability for serious international crimes, and the re-establishment of the rule of law in the countries of the former Yugoslavia and in Rwanda,

Recalling that the Tribunals were established in the particular circumstances of the former Yugoslavia and Rwanda as ad hoc measures contributing to the restoration and maintenance of peace,

Reaffirming its determination to combat impunity for those responsible for serious violations of international humanitarian law and the necessity that all persons indicted by the ICTY and ICTR are brought to justice,

Recalling the statement of the President of the Security Council of 1st December 2008 (S/PRST/2008/47), and *reaffirming* the need to establish an ad hoc mechanism to carry out a number of essential functions of the Tribunals, including the trial of fugitives who are among the most senior leaders suspected of being most responsible for crimes, after the closure of the Tribunals,

Emphasizing that, in view of the substantially reduced nature of the residual functions, the international residual mechanism should be a small, temporary and efficient structure, whose functions and size will diminish over time, with a small number of staff commensurate with its reduced functions,

Welcoming the Report of the Secretary-General (S/2009/258) on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the Tribunals,

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Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* to establish the International Residual Mechanism for Criminal Tribunals ("the Mechanism") with two branches, which shall commence functioning on 1 July 2012 (branch for the ICTR) and 1 July 2013 (branch for the ICTY), respectively ("commencement dates"), and to this end *decides* to adopt the Statute of the Mechanism in annex 1 to this resolution;

2. *Decides* that the provisions of this resolution and the Statutes of the Mechanism and of the ICTY and ICTR shall be subject to the transitional arrangements set out in annex 2 to this resolution;

3. *Requests* the ICTY and the ICTR to take all possible measures to expeditiously complete all their remaining work as provided by this resolution no later than 31 December 2014, to prepare their closure and to ensure a smooth transition to the Mechanism, including through advance teams in each of the Tribunals;

4. *Decides* that, as of the commencement date of each branch referred to in paragraph 1, the Mechanism shall continue the jurisdiction, rights and obligations and essential functions of the ICTY and the ICTR, respectively, subject to the provisions of this resolution and the Statute of the Mechanism, and all contracts and international agreements concluded by the United Nations in relation to the ICTY and the ICTR, and still in force as of the relevant commencement date, shall continue in force mutatis mutandis in relation to the Mechanism;

5. *Requests* the Secretary-General to submit at the earliest possible date, but no later than 30 June 2011, draft Rules of Procedure and Evidence of the Mechanism, which shall be based on the Tribunals' Rules of Procedure and Evidence subject to the provisions of this resolution and the Statute of the Mechanism, for consideration and adoption by the judges of the Mechanism;

6. *Decides* that the Rules of Procedure and Evidence of the Mechanism and any amendments thereto shall take effect upon adoption by the judges of the Mechanism unless the Security Council decides otherwise;

7. *Decides* that the determination of the seats of the branches of the Mechanism is subject to the conclusion of appropriate arrangements between the United Nations and the host countries of the branches of the Mechanism acceptable to the Security Council;

8. *Recalls* the obligation of States to cooperate with the Tribunals, and in particular to comply without undue delay with requests for assistance in the location, arrest, detention, surrender and transfer of accused persons;

9. *Decides* that all States shall cooperate fully with the Mechanism in accordance with the present resolution and the Statute of the Mechanism and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute of the Mechanism, including the obligation of States to comply with requests for assistance or orders issued by the Mechanism pursuant to its Statute;

10. *Urges* all States, especially States where fugitives are suspected to be at large, to further intensify cooperation with and render all necessary assistance to the

Tribunals and the Mechanism, as appropriate, in particular to achieve the arrest and surrender of all remaining fugitives as soon as possible;

11. *Urges* the Tribunals and the Mechanism to actively undertake every effort to refer those cases which do not involve the most senior leaders suspected of being most responsible for crimes to competent national jurisdictions in accordance with their respective Statutes and Rules of Procedure and Evidence;

12. *Calls upon* all States to cooperate to the maximum extent possible in order to receive referred cases from the Tribunals and the Mechanism;

13. *Requests* the Secretary-General to implement the present resolution and to make practical arrangements for the effective functioning of the Mechanism from the first commencement date referred to in paragraph 1, in particular to initiate no later than 30 June 2011 the procedures for the selection of the roster of judges of the Mechanism, as provided in its Statute;

14. *Requests* the Secretary-General to prepare, in consultation with the Security Council, an information security and access regime for the archives of the Tribunals and the Mechanism prior to the first commencement date referred to in paragraph 1;

15. *Requests* the Tribunals and the Mechanism to cooperate with the countries of the former Yugoslavia and with Rwanda, as well as with interested entities to facilitate the establishment of information and documentation centres by providing access to copies of public records of the archives of the Tribunals and the Mechanism, including through their websites;

16. *Requests* the President of the Mechanism to submit an annual report to the Security Council and to the General Assembly, and the President and the Prosecutor of the Mechanism to submit six-monthly reports to the Security Council on the progress of the work of the Mechanism;

17. *Decides* that the Mechanism shall operate for an initial period of four years from the first commencement date referred to in paragraph 1, and to review the progress of the work of the Mechanism, including in completing its functions, before the end of this initial period and every two years thereafter, and further *decides* that the Mechanism shall continue to operate for subsequent periods of two years following each such review, unless the Security Council decides otherwise;

18. *Underlines* its intention to decide on the modalities for the exercise of any remaining residual functions of the Mechanism upon the completion of its operation;

19. *Decides* to remain seized of the matter.

Annex 1

Statute of the International Residual Mechanism for Criminal Tribunals

Contents

	Page
Preamble	6
Article 1: Competence of the Mechanism	6
Article 2: Functions of the Mechanism	7
Article 3: Structure and Seats of the Mechanism	7
Article 4: Organization of the Mechanism	7
Article 5: Concurrent Jurisdiction	7
Article 6: Referral of Cases to National Jurisdictions	7
Article 7: *Non bis in Idem*	8
Article 8: Roster of Judges	8
Article 9: Qualification of Judges	9
Article 10: Election of Judges	9
Article 11: The President	10
Article 12: Assignment of Judges and Composition of the Chambers	10
Article 13: Rules of Procedure and Evidence	11
Article 14: The Prosecutor	11
Article 15: The Registry	11
Article 16: Investigation and Preparation of Indictment	12
Article 17: Review of the Indictment	12
Article 18: Commencement and Conduct of Trial Proceedings	12
Article 19: Rights of the Accused	13
Article 20: Protection of Victims and Witnesses	13
Article 21: Judgements	14
Article 22: Penalties	14
Article 23: Appellate Proceedings	14
Article 24: Review Proceedings	14
Article 25: Enforcement of Sentences	15
Article 26: Pardon or Commutation of Sentences	15
Article 27: Management of the Archives	15

Article 28: Cooperation and Judicial Assistance 15
Article 29: The Status, Privileges and Immunities of the Mechanism 16
Article 30: Expenses of the Mechanism 16
Article 31: Working Languages 16
Article 32: Reports 16

Statute of the International Residual Mechanism for Criminal Tribunals (IRMCT)

Preamble

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations to carry out residual functions of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter "ICTY") and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter "ICTR"), the International Residual Mechanism for Criminal Tribunals (hereinafter "the Mechanism") shall function in accordance with the provisions of the present Statute,

Article 1: Competence of the Mechanism

1. The Mechanism shall continue the material, territorial, temporal and personal jurisdiction of the ICTY and the ICTR as set out in Articles 1 to 8 of the ICTY Statute and Articles 1 to 7 of the ICTR Statute,[1] as well as the rights and obligations, of the ICTY and the ICTR, subject to the provisions of the present Statute.

2. The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute, the persons indicted by the ICTY or the ICTR who are among the most senior leaders suspected of being most responsible for the crimes covered by paragraph 1 of this Article, considering the gravity of the crimes charged and the level of responsibility of the accused.

3. The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute, the persons indicted by the ICTY or the ICTR who are not among the most senior leaders covered by paragraph 2 of this Article, provided that the Mechanism may only, in accordance with the provisions of the present Statute, proceed to try such persons itself after it has exhausted all reasonable efforts to refer the case as provided in Article 6 of the present Statute.

4. The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute,

(a) any person who knowingly and wilfully interferes or has interfered with the administration of justice by the Mechanism or the Tribunals, and to hold such person in contempt; or

(b) a witness who knowingly and wilfully gives or has given false testimony before the Mechanism or the Tribunals.

Before proceeding to try such persons, the Mechanism shall consider referring the case to the authorities of a State in accordance with Article 6 of the present Statute, taking into account the interests of justice and expediency.

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[1] See Articles 1 to 8 ICTY Statute (S/RES/827 (1993) and annex to S/25704 and Add.1 (1993)) and Articles 1 to 7 ICTR Statute (annex to S/RES/955 (1994)).

5. The Mechanism shall not have the power to issue any new indictments against persons other than those covered by this Article.

Article 2: Functions of the Mechanism

The Mechanism shall continue the functions of the ICTY and of the ICTR, as set out in the present Statute ("residual functions"), during the period of its operation.

Article 3: Structure and Seats of the Mechanism

The Mechanism shall have two branches, one branch for the ICTY and one branch for the ICTR, respectively. The branch for the ICTY shall have its seat in The Hague. The branch for the ICTR shall have its seat in Arusha.

Article 4: Organization of the Mechanism

The Mechanism shall consist of the following organs:

(a) The Chambers, comprising a Trial Chamber for each branch of the Mechanism and an Appeals Chamber common to both branches of the Mechanism;

(b) The Prosecutor common to both branches of the Mechanism;

(c) The Registry, common to both branches of the Mechanism, to provide administrative services for the Mechanism, including the Chambers and the Prosecutor.

Article 5: Concurrent Jurisdiction

1. The Mechanism and national courts shall have concurrent jurisdiction to prosecute persons covered by Article 1 of this Statute.

2. The Mechanism shall have primacy over national courts in accordance with the present Statute. At any stage of the procedure involving a person covered by Article 1, paragraph 2 of this Statute, the Mechanism may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the Mechanism.

Article 6: Referral of Cases to National Jurisdictions

1. The Mechanism shall have the power, and shall undertake every effort, to refer cases involving persons covered by paragraph 3 of Article 1 of this Statute to the authorities of a State in accordance with paragraphs 2 and 3 of this Article. The Mechanism shall have the power also to refer cases involving persons covered by paragraph 4 of Article 1 of this Statute.

2. After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Mechanism, the President may designate a Trial Chamber which shall determine whether the case should be referred to the authorities of a State:

(i) in whose territory the crime was committed; or

(ii) in which the accused was arrested; or

(iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.

3. In determining whether to refer a case involving a person covered by paragraph 3 of Article 1 of this Statute in accordance with paragraph 2 above, the Trial Chamber shall, consistent with Security Council resolution 1534 (2004), consider the gravity of the crimes charged and the level of responsibility of the accused.

4. The Trial Chamber may order such referral *proprio motu* or at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.

5. The Mechanism shall monitor cases referred to national courts by the ICTY, the ICTR, and those referred in accordance with this Article, with the assistance of international and regional organisations and bodies.

6. After an order referring a case has been issued by the ICTY, the ICTR or the Mechanism and before the accused is found guilty or acquitted by a national court, where it is clear that the conditions for referral of the case are no longer met and it is in the interests of justice, the Trial Chamber may, at the request of the Prosecutor or *proprio motu* and upon having given to the State authorities concerned the opportunity to be heard, revoke the order and make a formal request for deferral.

Article 7: *Non bis in Idem*

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the ICTY, the ICTR or the Mechanism.

2. A person covered by Article 1 of this Statute who has been tried before a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the Mechanism only if:

(a) The act for which he or she was tried was characterized as an ordinary crime; or

(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the Mechanism shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 8: Roster of Judges

1. The Mechanism shall have a roster of 25 independent judges ("judges of the Mechanism"), not more than two of whom may be nationals of the same State.

2. A person who for the purposes of membership of the roster could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

3. The judges of the Mechanism shall only be present at the seats of the branches of the Mechanism as necessary at the request of the President to exercise the functions requiring their presence. In so far as possible, and as decided by the President, the functions may be exercised remotely, away from the seats of the branches of the Mechanism.

4. The judges of the Mechanism shall not receive any remuneration or other benefits for being on the roster. The terms and conditions of service of the judges for each day on which they exercise their functions for the Mechanism shall be those of the judges ad hoc of the International Court of Justice. The terms and conditions of service of the President of the Mechanism shall be those of the judges of the International Court of Justice.

Article 9: Qualification of Judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. Particular account shall be taken of experience as judges of the ICTY or the ICTR.

2. In the composition of the Trial and Appeals Chambers, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

Article 10: Election of Judges

1. The judges of the Mechanism shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges, preferably from among persons with experience as judges of the ICTY or the ICTR, from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in Article 9, paragraph 1 of the Statute;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than 30 candidates, taking due account of the qualifications set out in Article 9, paragraph 1 and adequate representation of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect 25 judges of the Mechanism. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should more than two candidates of the same nationality obtain the required majority vote, the two who received the highest number of votes shall be considered elected.

2. In the event of a vacancy in the roster, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall

appoint a person meeting the qualifications of Article 9, paragraph 1 of the Statute, for the remainder of the term of office concerned.

3. The judges of the Mechanism shall be elected for a term of four years and shall be eligible for reappointment by the Secretary-General after consultation with the Presidents of the Security Council and of the General Assembly.

4. If there are no judges remaining on the roster or if no judge on the roster is available for appointment, and if it is not possible to assign a judge currently serving at the Mechanism, and all practical alternatives having been explored, the Secretary-General may, at the request of the President of the Mechanism and after consultation with the Presidents of the Security Council and of the General Assembly, appoint a person meeting the qualifications of Article 9, paragraph 1 of the Statute, to serve as a judge of the Mechanism.

Article 11: The President

1. After consultation with the President of the Security Council and the judges of the Mechanism, the Secretary-General shall appoint a full-time President from among the judges of the Mechanism.

2. The President shall be present at either seat of the branches of the Mechanism as necessary to exercise his or her functions.

Article 12: Assignment of Judges and Composition of the Chambers

1. In the event of a trial of a case pursuant to paragraphs 2 and 3 of Article 1 of this Statute, or to consider the referral of such a case to a national jurisdiction, the President shall appoint three judges from the roster to compose a Trial Chamber and the Presiding Judge from amongst their number to oversee the work of that Trial Chamber. In all other circumstances, including trials pursuant to paragraph 4 of Article 1 of this Statute, the President shall appoint a Single Judge from the roster to deal with the matter.

2. The President may designate a duty judge from the roster for each branch of the Mechanism, who will be available at short notice, to serve as a Single Judge and to whom indictments, warrants, and other matters not assigned to a Trial Chamber, may be transmitted for decision.

3. The President of the Mechanism shall be a member of the Appeals Chamber, appoint the other members and preside over its proceedings. In the event of an appeal against a decision by a Single Judge, the Appeals Chamber shall be composed of three judges. In the event of an appeal against a decision by a Trial Chamber, the Appeals Chamber shall be composed of five judges.

4. In the event of an application for review in accordance with Article 24 of this Statute of a judgment rendered by a single Judge or by a Trial Chamber, the President shall appoint three judges to compose a Trial Chamber on review. In the event of an application for review of a judgment rendered by the Appeals Chamber, the Appeals Chamber on review shall be composed of five judges.

5. The President may appoint, from among the judges of the Mechanism, a reserve judge to be present at each stage of a trial and to replace a judge if that judge is unable to continue sitting.

Article 13: Rules of Procedure and Evidence

1. The judges of the Mechanism shall adopt Rules of Procedure and Evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.

2. Amendments of the Rules of Procedure and Evidence may be decided remotely by the judges of the Mechanism by written procedure.

3. The Rules of Procedure and Evidence and any amendments thereto shall take effect upon adoption by the judges of the Mechanism unless the Security Council decides otherwise.

4. The Rules of Procedure and Evidence and amendments thereto shall be consistent with this Statute.

Article 14: The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons covered by Article 1 of this Statute.

2. The Prosecutor shall act independently as a separate organ of the Mechanism. He or she shall not seek or receive instructions from any government or from any other source.

3. The Office of the Prosecutor shall be composed of a Prosecutor, an officer in charge at the seat of each branch of the Mechanism designated by the Prosecutor, and such other qualified staff as may be required, in accordance with paragraph 5 of this Article. The Prosecutor shall be present at either seat of the branches of the Mechanism as necessary to exercise his or her functions.

4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.

5. The Office of the Prosecutor shall retain a small number of staff commensurate with the reduced functions of the Mechanism, who shall serve at the seats of the branches of the Mechanism. The Office shall maintain a roster of qualified potential staff, preferably from among persons with experience at the ICTY or the ICTR, to enable it to recruit additional staff rapidly as may be required to perform its functions. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 15: The Registry

1. The Registry shall be responsible for the administration and servicing of the branches of the Mechanism.

2. The Registry shall consist of a Registrar, an officer in charge at the seat of each branch of the Mechanism designated by the Registrar, and such other qualified staff as may be required in accordance with paragraph 4 of this Article. The

Registrar shall be present at either seat of the branches of the Mechanism as necessary to exercise his or her functions.

3. The Registrar shall be appointed by the Secretary-General for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The Registry shall retain a small number of staff commensurate with the reduced functions of the Mechanism, who shall serve at the seat of the respective branches of the Mechanism. The Registry shall maintain a roster of qualified potential staff, preferably from among persons with experience at the ICTY or the ICTR, to enable it to recruit additional staff rapidly as may be required to perform its functions. The Staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 16: Investigation and Preparation of Indictment

1. The Prosecutor shall have the power to conduct investigations against persons covered by Article 1 of this Statute. The Prosecutor shall not have the power to prepare new indictments against persons other than those covered by Article 1 of this Statute.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by Counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as necessary translation into and from a language he or she speaks and understands.

4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to the duty judge or a Single Judge designated by the President.

Article 17: Review of the Indictment

1. The indictment shall be reviewed by the duty judge or a Single Judge designated by the President. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 18: Commencement and Conduct of Trial Proceedings

1. The Single Judge or Trial Chambers conducting a trial shall ensure that the trial is fair and expeditious and that proceedings are conducted in accordance with

the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the Mechanism, be taken into custody, immediately informed of the charges against him or her and transferred to the Mechanism.

3. The Single Judge or judge of the Trial Chamber designated by the President shall read the indictment, ensure that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Single Judge or Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Single Judge or Trial Chamber decides to close the proceedings in accordance with its Rules of Procedure and Evidence.

Article 19: Rights of the Accused

1. All persons shall be equal before the Mechanism.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to Article 20 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) to have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

(c) to be tried without undue delay;

(d) to be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(e) to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

(f) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Mechanism;

(g) not to be compelled to testify against himself or herself or to confess guilt.

Article 20: Protection of Victims and Witnesses

The Mechanism shall provide in its Rules of Procedure and Evidence for the protection of victims and witnesses in relation to the ICTY, the ICTR, and the

Mechanism. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 21: Judgements

1. The Single Judge or Trial Chamber shall pronounce judgements and impose sentences and penalties on persons covered by Article 1 of this Statute who are convicted by the Mechanism.

2. All judgements shall be delivered in public and shall be accompanied by a reasoned opinion in writing. Judgements by a Chamber shall be rendered by a majority of the judges, to which separate or dissenting opinions may be appended.

Article 22: Penalties

1. The penalty imposed on persons covered by paragraphs 2 and 3 of Article 1 of this Statute shall be limited to imprisonment. The penalty imposed on persons covered by paragraph 4 of Article 1 of this Statute shall be a term of imprisonment not exceeding seven years, or a fine of an amount to be determined in the Rules of Procedure and Evidence, or both.

2. In determining the terms of imprisonment, the Single Judge or Trial Chamber shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia and in those of Rwanda, respectively.

3. In imposing the sentences, the Single Judge or Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

4. In addition to imprisonment, the Single Judge or Trial Chamber may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 23: Appellate Proceedings

1. The Appeals Chamber shall hear appeals from convicted persons or from the Prosecutor on the following grounds:

(a) an error on a question of law invalidating the decision; or

(b) an error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Single Judge or Trial Chamber.

Article 24: Review Proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Single Judge, Trial Chamber or the Appeals Chamber of the ICTY, the ICTR, or the Mechanism and which could have been a decisive factor in reaching the decision, the convicted person may submit to the Mechanism an application for review of the judgement. The Prosecutor may submit such an application within one year from the day that the final judgement was pronounced. The Chamber shall only review the judgement if after a preliminary examination a majority of judges of the Chamber agree that the new fact, if proved, could have been a decisive factor in reaching a decision.

Article 25: Enforcement of Sentences

1. Imprisonment shall be served in a State designated by the Mechanism from a list of States with which the United Nations has agreements for this purpose. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the Mechanism.

2. The Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTY, the ICTR or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States, and other agreements with international and regional organizations and other appropriate organisations and bodies.

Article 26: Pardon or Commutation of Sentences

If, pursuant to the applicable law of the State in which the person convicted by the ICTY, the ICTR, or the Mechanism is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly. There shall only be pardon or commutation of sentence if the President of the Mechanism so decides on the basis of the interests of justice and the general principles of law.

Article 27: Management of the Archives

1. Without prejudice to any prior conditions stipulated by, or arrangements with, the providers of information and documents, the archives of the ICTY, the ICTR and the Mechanism shall remain the property of the United Nations. These archives shall be inviolable wherever located pursuant to Section 4 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

2. The Mechanism shall be responsible for the management, including preservation and access, of these archives. The archives of the ICTY and the ICTR shall be co-located with the respective branches of the Mechanism.

3. In managing access to these archives, the Mechanism shall ensure the continued protection of confidential information, including information concerning protected witnesses, and information provided on a confidential basis. For this purpose, the Mechanism shall implement an information security and access regime, including for the classification and declassification as appropriate of the archives.

Article 28: Cooperation and Judicial Assistance

1. States shall cooperate with the Mechanism in the investigation and prosecution of persons covered by Article 1 of this Statute.

2. States shall comply without undue delay with any request for assistance or an order issued by a Single Judge or Trial Chamber in relation to cases involving persons covered by Article 1 of this Statute, including, but not limited to:

(a) the identification and location of persons;

(b) the taking of testimony and the production of evidence;

(c) the service of documents;

(d) the arrest or detention of persons;

(e) the surrender or the transfer of the accused to the Mechanism.

3. The Mechanism shall respond to requests for assistance from national authorities in relation to investigation, prosecution and trial of those responsible for serious violations of international humanitarian law in the countries of former Yugoslavia and Rwanda, including, where appropriate, providing assistance in tracking fugitives whose cases have been referred to national authorities by the ICTY, the ICTR, or the Mechanism.

Article 29: The Status, Privileges and Immunities of the Mechanism

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the Mechanism, the archives of the ICTY, the ICTR and the Mechanism, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

2. The President, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law. The judges of the Mechanism shall enjoy the same privileges and immunities, exemptions and facilities when engaged on the business of the Mechanism.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this Article.

4. Defence counsel, when holding a certificate that he or she has been admitted as counsel by the Mechanism and when performing their official functions, and after prior notification by the Mechanism to the receiving State of their mission, arrival and final departure, shall enjoy the same privileges and immunities as are accorded to experts on mission for the United Nations under Article VI, Section 22, paragraphs (a) to (c), and Section 23, of the Convention referred to in paragraph 1 of this Article. Without prejudice to their privileges and immunities, it is the duty of defence counsel enjoying such privileges and immunities to respect the laws and regulations of the receiving State.

5. Other persons, including the accused, required at the seats of the Mechanism, shall be accorded such treatment as is necessary for the proper functioning of the Mechanism.

Article 30: Expenses of the Mechanism

The expenses of the Mechanism shall be expenses of the Organisation in accordance with Article 17 of the Charter of the United Nations.

Article 31: Working Languages

The working languages of the Mechanism shall be English and French.

Article 32: Reports

1. The President of the Mechanism shall submit an annual report of the Mechanism to the Security Council and to the General Assembly.

2. The President and Prosecutor shall submit six-monthly reports to the Security Council on the progress of the work of the Mechanism.

Annex 2

Transitional Arrangements

Article 1 — Trial Proceedings

1. The ICTY and ICTR shall have competence to complete all trial or referral proceedings which are pending with them as of the commencement date of the respective branch of the Mechanism.

2. If a fugitive indicted by the ICTY or ICTR is arrested more than 12 months, or if a retrial is ordered by the Appeals Chamber more than 6 months prior to the commencement date of the respective branch of the Mechanism, the ICTY or ICTR, respectively, shall have competence over such person in accordance with their respective Statutes and Rules of Procedure and Evidence to conduct, and complete, the trial of such person, or to refer the case to the authorities of a State, as appropriate.

3. If a fugitive indicted by the ICTY or ICTR is arrested 12 months or less, or if a retrial is ordered 6 months or less prior to the commencement date of the respective branch of the Mechanism, the ICTY or ICTR, respectively, shall only have competence over such person in accordance with their respective Statutes and Rules of Procedure and Evidence to prepare the trial of such person, or to refer the case to the authorities of a State, as appropriate. As of the commencement date of the respective branch of the Mechanism, the Mechanism shall have competence over such person in accordance with Article 1 of its Statute, including trial of such person or referral of the case, as appropriate.

4. If a fugitive indicted by the ICTY or ICTR is arrested or if a retrial is ordered on or after the commencement date of the respective branch of the Mechanism, the Mechanism shall have competence over such person in accordance with Article 1 of its Statute.

Article 2 — Appeals Proceedings

1. The ICTY and ICTR shall have competence to conduct, and complete, all appellate proceedings for which the notice of appeal against the judgment or sentence is filed prior to the commencement date of the respective branch of the Mechanism.

2. The Mechanism shall have competence to conduct, and complete, all appellate proceedings for which the notice of appeal against the judgment or sentence is filed on or after the commencement date of the respective branch of the Mechanism.

Article 3 — Review Proceedings

1. The ICTY and ICTR shall have competence to conduct, and complete, all review proceedings for which the application for review of the judgment is filed prior to the commencement date of the respective branch of the Mechanism.

2. The Mechanism shall have competence to conduct, and complete, all review proceedings for which the application for review of the judgment is filed on or after the commencement date of the respective branch of the Mechanism.

Article 4 — Contempt of Court and False Testimony

1. The ICTY and ICTR shall have competence to conduct, and complete, all proceedings for contempt of court and false testimony for which the indictment is confirmed prior to the commencement date of the respective branch of the Mechanism.

2. The Mechanism shall have competence to conduct, and complete, all proceedings for contempt of court and false testimony for which the indictment is confirmed on or after the commencement date of the respective branch of the Mechanism.

Article 5 — Protection of Victims and Witnesses

1. The ICTY and ICTR shall provide for the protection of victims and witnesses, and carry out all related judicial or prosecutorial functions, in relation to all cases for which the ICTY or ICTR, respectively, has competence pursuant to Articles 1 to 4 of the present annex.

2. The Mechanism shall provide for the protection of victims and witnesses, and carry out all related judicial or prosecutorial functions, in relation to all cases for which the Mechanism has competence pursuant to Articles 1 to 4 of the present annex.

3. The Mechanism shall provide for the protection of victims and witnesses, and carry out all related judicial or prosecutorial functions, where a person is a victim or witness in relation to two or more cases for which the Mechanism and the ICTY or ICTR, respectively, have competence pursuant to Articles 1 to 4 of the present annex.

4. The ICTY and ICTR, respectively, shall make the necessary arrangements to ensure as soon as possible a coordinated transition of the victims and witness protection function to the Mechanism in relation to all completed cases of the Tribunals. As of the commencement date of the respective branch of the Mechanism, the Mechanism shall carry out all related judicial or prosecutorial functions in relation to these cases.

Article 6 — Coordinated Transition of other Functions

The ICTY and ICTR, respectively, shall make the necessary arrangements to ensure, as soon as possible, a coordinated transition of the other functions of the Tribunals to the Mechanism, including the supervision of enforcement of sentences, assistance requests by national authorities, and the management of records and archives. As of the commencement date of the respective branch of the Mechanism, the Mechanism shall carry out all related judicial or prosecutorial functions.

Article 7 — Transitional Arrangements for the President, Judges, Prosecutor, Registrar and Staff

Notwithstanding the provisions of the Statutes of the Mechanism, the ICTY and ICTR,

(a) the President, Judges, Prosecutor and Registrar of the Mechanism may also hold the office of President, Judge, Prosecutor and Registrar, respectively, of the ICTY or ICTR;

(b) the staff members of the Mechanism may also be staff members of the ICTY or ICTR.

United Nations S/2010/652

Security Council

Distr.: General
29 December 2010

Original: English

Identical letters dated 21 December 2010 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council

I write to inform you of a series of serious incidents in southern Israel and the Gaza Strip that threaten peace and stability in our region.

Earlier today, 21 December 2010, at approximately 8 a.m. local time, a Qassam rocket was fired from the Gaza Strip into the Ashkelon area of southern Israel, landing in Kibbutz Zikim. This rocket exploded near a kindergarten just as dozens of parents were dropping off their children at school, injuring a 14-year-old girl.

The incident follows a spate of attacks emanating from Gaza since 19 December 2010, encompassing the launch of some three rockets and 18 mortars into the regions of Eshkol and Ashkelon in southern Israel. These attacks included the launch of six mortars on 19 December 2010 at Israel Defense Forces operating near the Kerem Shalom Crossing.

The incidents of the past several days are part of an escalation of terrorist attacks emanating from Gaza that target Israeli civilians, towns and military personnel. Israel holds the de facto authority in the Gaza Strip completely responsible for all of these incidents, which are carried out in clear violation of international law. In response to such attacks, Israel has exercised and will continue to exercise its right to self-defence.

In a previous letter dated 9 December 2010 (S/2010/623), I mentioned that the escalation of such attacks should be viewed with the utmost seriousness. With the intention of preventing the continued escalation of conflict, the Security Council, the Secretary-General and the international community must send a clear and resolute message that these attacks are unacceptable.

In addition, the Security Council must give appropriate attention to the smuggling of arms into Gaza, which continues to fuel violence and instability in our region, in violation of numerous Security Council resolutions, including resolution 1860 (2009).

I should be grateful if you would have the present letter distributed as a document of the Security Council.

(*Signed*) Meron **Reuben**
Ambassador
Permanent Mission of Israel to the United Nations

10-71102 (E) 040111

Please recycle

United Nations S/2010/653

Security Council

Distr.: General
21 December 2010

Original: English

Letter dated 20 December 2010 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council

I have the honour to transmit herewith the report of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities reflecting its position on the recommendations contained in the report of the Analytical Support and Sanctions Monitoring Team on the outcome of the review of the Consolidated List described in paragraph 25 of resolution 1822 (2008) (S/2010/497).

I should be grateful if the attached report could be brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Thomas **Mayr-Harting**
Chairman
Security Council Committee established
pursuant to resolution 1267 (1999)
concerning Al-Qaida and the Taliban
and associated individuals and entities

10-70429 (E) 291210

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S/2010/497

Recommendations contained in the Report of the Analytical Support and Sanctions Monitoring Team on the outcome of the review described in paragraph 25 of resolution 1822 (2008): position of the Committee

I. Introduction

1. After a thorough examination of the report of the Analytical Support and Monitoring Team on the outcome of the review described in paragraph 25 of resolution 1822 (2008) (S/2010/497), submitted pursuant to paragraph 30 of resolution 1904 (2009), the Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities would like to bring to the attention of the Security Council its position on a number of the recommendations contained therein, and on the conduct of the reviews mandated by the Security Council in resolution 1904 (2009).[1] In this connection it should be recalled that the Chairman of the Committee conveyed the report to the President of the Security Council on 28 September 2010.

2. The Committee appreciates the valuable assistance the Monitoring Team provided while the Committee conducted the review of the Consolidated List called for in paragraph 25 of resolution 1822 (2008) and it welcomes the Monitoring Team's continued efforts to identify ways to improve the conduct of the periodic reviews of the Consolidated List as called for in resolution 1904 (2009), namely the annual reviews of all listings not reviewed in three or more years, the forthcoming six-monthly review of individuals on the List believed to be deceased and the annual reviews of entries on the List which lack identifiers necessary to ensure effective implementation of the measures.

II. Recommendations

3. **Interaction with non-Committee members (para. 72).** The Committee agrees that the success of List reviews depends largely on the input provided by relevant Member States. In this regard the Committee encourages States, where appropriate, to take a more active part in the forthcoming list reviews, including by appearing before the Committee to discuss cases of particular interest or importance or to provide specific additional information concerning issues of de-listing. Additionally, the Committee will consider inviting relevant State(s) to participate at Committee meetings. The Committee notes that such interactions, which are also envisioned in paragraph 36 of resolution 1904 (2009), can help to improve the quality of the Consolidated List.

4. **Letters to Member States (para. 73).** The Committee agrees that letters to States requesting information in the context of forthcoming review processes should be tailored for the recipients, in order to obtain as much useful information from States and to encourage collective and more comprehensive replies.

[1] This is the ninth written report of the Committee to the Security Council on the reports of the Monitoring Team. Earlier reports of the Monitoring Team and the corresponding reports of the Committee can be found on the Committee's website (www.un.org/sc/committees/1267/index.shtml).

5. **National focal points (para. 74).** The Committee recalls that in paragraph 8 of resolution 1904 (2009), the Council encouraged Member States, inter alia, to appoint a national contact point concerning entries on the Consolidated List. The Guidelines of the Committee stipulate in this regard that the contact points should be appointed according to national laws and procedures (see www.un.org/sc/committees/1267/pdf/1267_guidelines.pdf). In this connection, the Committee notes that determinations regarding the location of such focal points (e.g. capital or New York) rest with Member States.

6. **Names that qualify for more than one review (para. 75).** The Committee underscores its obligation to conduct all reviews as mandated by the Security Council in resolution 1904 (2009). In cases where entries on the Consolidated List qualify for more than one review, these reviews will be conducted separately.

7. **Structure of future reviews and preparation of lessons-learned paper (para. 76).** The Committee agrees that for the forthcoming reviews of the Consolidated List the Chairman, with the support of the Secretariat, should propose to the Committee the structure and process that will be agreed upon by the Committee and followed to conduct the review, one month before it is due to start, in order to facilitate a better understanding of the work involved. The Committee would also welcome the submission by the Chairman (with the support of the Secretariat) of a brief paper on the lessons learned during the conduct of the review pursuant to paragraph 75 of resolution 1822 (2008), for the benefit of future reviews.

8. **Progress with reviews (para. 77).** The Committee endorses the recommendation to include in its programme of work a biannual discussion of its progress in completing the reviews in order to keep track of the volume of work remaining and to allow discussion of the lessons learned from each review after its conclusion in order to improve procedures for the future.

9. **Official translations (para. 78).** The Committee encourages States and relevant international organizations to provide a translation into one of the official languages of the United Nations when they submit information which is not in one of the six official languages.

10. **Provision of substantial information (para. 79).** The Committee is of the view that entries on the Consolidated List for which the available reasons for listing are considered vague or unclear should be subject to in-depth discussion in the Committee. While noting the constraints on releasing publicly some information justifying certain listings, the Committee agreed that States should make every effort to provide substantial information to the Committee as to why they support the retention of relevant entries on the Consolidated List. Such information could include one or more of the criteria for listing set out in resolution 1617 (2007).

11. **Increasing the accuracy of the List (para. 80).** The Committee underlines the importance of keeping the Consolidated List up to date and accurate. Therefore, when contacting States of residence as part of the review process, the Committee will ask these States for all information on the whereabouts of the individual or entity in question, their circumstances and activity, together with information on any additional measures taken to prevent their support for terrorism. At the same time, the Committee will ask about the existence of frozen assets, valid travel documents,

and will seek information on any court proceedings involving the listed individual or entity.

12. **Consideration of de-listing requests (para. 81).** The Committee recalls that, in paragraph 25 of resolution 1904 (2009), the Council encouraged the Committee to give due consideration to the opinions of designating State(s) and State(s) of residence, nationality or incorporation when considering de-listing requests, and called upon Committee members to make every effort to provide their reasons for objecting to de-listing requests. The Committee will continue to give careful consideration to the opinions of these States when considering de-listing requests, which should be well reasoned (see also para. 15 below), including in the context of its forthcoming reviews, and it will continue to actively seek from its members their reasons for objecting to de-listing requests.

13. **Absence of recent information (para. 82).** The Committee agrees that when no Member State or the Monitoring Team has discovered any information about the activities of a listed person over two review periods (six years), it will, particularly in the framework of its various reviews, invite the designating States to submit a de-listing request or provide information to update the List entry.

14. **Committee members' position on the appropriateness of listings (para. 83).** The Committee agrees that in certain instances it could be feasible for Committee members which are also designating States or States of citizenship/residence/incorporation to provide information in advance but withhold indication of their position on the appropriateness of listing until the Committee formally reviews that name, so that the full range of information would be available to the State concerned before it expresses its opinion. The Committee, however, will not establish this practice as a general rule for its forthcoming reviews.

15. **Reasons for the removal or retention of names on the Consolidated List (para. 84).** The Committee underlines the importance of receiving reasons from Member States explaining why they support retention or removal of a name in the course of the reviews and requests all Member States that express their opinion on the appropriateness of a listing to provide fact-based reasons, in full conformity with resolution 1904 (2009) and the Committee's Guidelines.

16. **Updating narrative summaries (para. 85).** When writing to Member States in the framework of the various reviews, the Committee will attach the corresponding narrative summaries of reasons for listing and will ask the State to provide any available updated information that could improve the Consolidated List entries or their corresponding narrative summaries.

17. **Narrative summaries lacking detail (para. 86).** The Committee welcomes the recommendation of the Monitoring Team that it request the Team to compile an annual list of all entries for which the corresponding narrative summaries do not contain information that would substantiate the listing in accordance with the criteria set out in paragraph 2 of resolution 1904 (2009).

18. **Optimization of forthcoming reviews (para. 87).** The Committee will consider how best to optimize the timing of the triennial review of all List entries pursuant to paragraph 32 of resolution 1904 (2009) in order to avoid an uneven distribution of work. It will also revisit, with the assistance of the Monitoring Team, the method by which it groups names together for consideration, so as to ensure that the names included in each group are substantively linked to each other.

19. **Official confirmation of death of a listed person (para. 88).** The Committee considers any official communication from the relevant State declaring a listed person to be dead as fulfilling the requirement for "credible information regarding death" as described by paragraph 26 of resolution 1904 (2009), without prejudice to the final decision of the Committee as to the removal of the name from the List. The official communication, such as documentation certifying death, should include, to the extent possible, the full name, permanent reference number and date of birth of the individual and the date and place of death, as well as any further information about the circumstances of the death.

20. **Official statement on the status of the assets of a deceased person (para. 89).** While reviewing the appropriateness of the listing of persons who are reportedly deceased, and in cases where individuals have no frozen assets, the Committee will accept as sufficient for de-listing an official communication from the State(s) of nationality and residence declaring the financial status of the individuals in question, without prejudice to the final decision of the Committee.

21. **Entities that have ceased to exist (para. 90).** In order to keep the Consolidated List as up to date as possible, the Committee will undertake a review of listings of entities reported or confirmed to have ceased to exist, in order to decide whether they remain appropriate, on the basis of previously agreed criteria and modalities. This would necessitate the Monitoring Team circulating, every six months, a list of entities believed to have ceased to exist and the Committee defining procedures for this review pursuant to the Committee's Guidelines.

22. **Entries lacking identifiers necessary to ensure effective implementation of the measures (para. 91).** Without prejudice to the final decision of the Committee on any listing or de-listing, when conducting its triennial review and in the framework of other reviews, where appropriate, the Committee will consider whether an entry lacks identifiers necessary for effective implementation of the measures. For an individual, necessary identifiers could include the full name, date of birth, place of birth and nationality. For a legal entity they could include the full registered name and the location of all offices, branches or subsidiaries that are subject to sanctions. Where the Committee decides that identifiers for an entry are not fully sufficient, it will invite the relevant designating State(s) to provide further detail or to examine whether de-listing requests can be made.

23. **Review of pending issues (para. 93).** The Committee has initiated the review of all issues pending before the Committee as at 17 December 2009 pursuant to paragraph 42 of resolution 1904 (2009). In this regard, the Committee has written to those States which submitted the pending requests, the Monitoring Team and the Committee members which placed holds on these issues. The Committee intends to resolve the pending issues pursuant to resolution 1904 (2009) by 31 December 2010.

III. Conclusion

24. The Committee would like to thank the Monitoring Team for its report and the valuable recommendations contained therein. The Committee would like to underline the special importance of these recommendations, many of which will be of great use when undertaking future reviews.